

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ISIDRO VIZCARRA, DEFENDANT AND APPELLANT.

G. R. No. 42249. January 22, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant and appellant was tried in the Court of First Instance of Manila on a plea of not guilty to an information alleging:

"That on or about the 1st day of January, 1934, in the City of Manila, Philippine Islands, the said accused, then a detention prisoner in Bilibid Prison pending his appeal from the sentence imposed upon him by the Court of First Instance of this city for the crime of frustrated murder, did then and there willfully, unlawfully, feloniously and without just cause, assault, beat and use personal violence upon one Eugenio Motos, another prisoner serving sentence in Bilibid Prison, by then and there striking the said Eugenio Motos with his fist and holding him fast by the neck under his (the accused's) left arm, thereby causing the said Eugenio Motos to sustain a dislocation of the third cervical vertebra which resulted in compression myelitis and hemorrhages of the spinal cord, and the death of said Eugenio Motos about three days thereafter."

Upon the termination of the trial, the lower court found the defendant guilty as charged, with the presence of the mitigating circumstance of lack of intention to commit so grave a wrong as that committed, and sentenced him to suffer an indeterminate sentence of not less than six years and one day of prison mayor and not more than twelve years and one day of reclusion temporal, to indemnify the heirs of Eugenio Motos in the sum of P500, and to pay the costs.

Appellant's attorney now alleges that the trial judge committed the following errors:

- "1. The lower court erred in finding that the cause of the death of the offended party was a result of the act of the accused in holding the deceased under his armpit between his left arm and the left breast.
- "2. The lower court erred in not finding that the cause of death was the falling of the deceased against the cement pavement as a result of the struggle between him and the accused.
- "3. The lower court erred in giving credit to the testimony of Mateo Franco.
- "4. The lower court erred in finding the accused guilty of the crime."

In a well considered decision, Judge Proceso Sebastian made the following findings of fact which are fully sustained by the evidence of record:

"The evidence adduced at the trial by the prosecution has established the following facts: That on January 1, 1934, the defendant was a detention prisoner in Bilibid Prison, awaiting the final disposition of his case then pending appeal in the, Supreme Court. The deceased, Eugenio Motos, was also a prisoner in Bilibid Prison where he was serving his sentence. On the evening of January 1, 1934, a vaudeville show was given in the 'plaza' of Bilibid Prison, for the benefit of the inmates of this penal institution. During the show, there arose a

dispute between the defendant and the deceased on account of the bench on which the latter was seated and which the defendant claimed for himself. When the show was over, the prisoners returned to their respective 'brigades' or cells. While the prisoners were waiting for the door that leads to 'brigades' 4-AC and 3-AC to be opened, somebody elbowed the defendant who, suspecting it to be the deceased, turned around and said to the latter: 'Why are you elbowing me?' The deceased protested against the accusation. The defendant then struck the deceased with his fist and a fight ensued, the defendant and the deceased grappling with each other. The deceased caught the defendant above the waist. The defendant, on the other hand, caught the deceased's head under his left arm, in such a way that the head of the deceased was held fast under the defendant's armpit, between the left arm and the left breast. In this position, the defendant pushed the deceased backwards. During the struggle, the combatants moved away from the door of the fence enclosing the 'brigades' 4-AC and 3-AC towards the middle of the alley which separates 'brigade' 4-AC from 'brigade' 3-AC. Here a prisoner trustee (trusty), by the name of Benito Capuyan, intervened and separated them. Upon being freed from the hold of the defendant, the deceased fell unconscious to the ground. The deceased was immediately taken to his 'brigade' and later to the prison hospital,

"It has also been established that the deceased upon his being taken to the hospital of Bilibid, was immediately examined and treated by Dr. Mariano Dimanlig, resident physician and Assistant Chief Surgeon of the Bureau of Prisons. Doctor Dimanlig suspected that the patient was suffering from a lesion in the cervical vertebra, in view of the patient's inability to move his head and because there was a general paralysis of his body. Notwithstanding the efforts displayed by Doctor Dimanlig, who treated the patient, the latter died in the hospital on January 5, 1934.

"In order to determine the real cause of death of Eugenio Motos, Doctor Estrada, Chief Physician and Surgeon of the Bilibid Hospital, and the City Fiscal requested the MedicoLegal Department of the University of the Philippines to perform an autopsy. Dr. Pablo Anzures, medico-legal officer of the Department of Medicine and Surgery of the University of the Philippines and a pathologist working in the City Morgue, conducted a post-mortem examination of the body of the deceased. His findings were as follows:

" 'Anterior dislocation of the third cervical vertebra.

" 'Hemorrhages around and within the spinal cord, cervical portion.

" 'Myelitis, compression.

" 'Distension, congestion, edema and emphysema of lungs.

" 'Congestion of all organs.'

"Basing his opinion upon his findings, Doctor Anzures concluded that the cause of death of the deceased was 'compression myelitis and hemorrhages of the spinal cord secondary to traumatic dislocation of the third cervical vertebra.' "

There can be no reasonable doubt that the neck of Eugenio Motos was broken when he and the defendant fell to the ground in their struggle while the defendant was holding the neck of Motos under his left arm in what is called a "head lock." The evidence shows that there was no stone or other object against which the neck of the deceased might have struck, and since the ground was level, the falling of the deceased might have injured the back of his head, but could not have caused the dislocation of a bone in his neck unless his neck had been held as in a vise by the defendant. The evidence further shows that the defendant was not acting in self-defense, but that he had wrongfully assaulted Motos. The only mitigating circumstance to which the defendant is entitled is, as correctly found by the lower court, that he did not intend to kill the deceased.

The assignments of error are devoid of merit, and, with the sole modification that the indemnity be increased from P500 to P1,000, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Abad Santos, and Hull, JJ., concur.

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